



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

November 30, 2021

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STATE CLEARINGHOUSE

Ross Steenson
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Dear Mr. Steenson:

SEDIMENT REMEDIATION PROJECT, PIERS 39 TO 43.5 (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND) SCH# 2021100323

The California Department of Fish and Wildlife (Department) received a Mitigated Negative Declaration from San Francisco Bay Regional Water Quality Control Board (Waterboard) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, Section 1802.) Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

The Department is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed the Project may result in take as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Pacific Gas & Electric (PG&E)

Objective: The objective of the Project is to remediate sediments impacted with Polycyclic Aromatic Hydrocarbons (PAH) within the Project Area to protect human health and the environment. The recommended remedial alternative proposes dredging to remove contaminated sediment, offsite disposal of contaminated sediment, and capping of sediments that pose a risk to human or environmental health. Placement of armoring where necessary during capping would protect installed sand caps or existing sediment from scour or disturbance that might expose sediment with elevated PAH concentrations. Dredged sediment will be placed in and transported by barge to Pier 96 on the southern San Francisco waterfront, offloaded, placed in a containment area for drying and transport by truck to a licensed landfill. Capping material and equipment staging will also occur at Pier 96.

Location: The Project Area encompasses Pier 39 and the intertidal and subtidal area between Pier 39 and Pier 43½ along the margin of San Francisco, extending approximately 1,000 feet into the Bay to the north of The Embarcadero, approximately between Taylor and Kearny Streets. The Project Area includes a small craft marina; multiple piers housing vessels for bay excursions, cruises, sailing, fishing, and ferry operations; and a high concentration of visitor-related commercial development (shops and restaurants). The adjacent upland area consists of densely developed commercial areas including parking lots, hotels, shops, restaurants, pedestrian and bicycle pathways, a playground, and some park areas.

Timeframe: The Project anticipates starting work in 2023 and ending in 2029.

MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

State and Federally Listed and Commercially/Recreationally Important Species

Protected species under the State and Federal Endangered Species Acts that could potentially be present near Program activities include:

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Spring-run), state and federally endangered (Winter-run)
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs)
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS)
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected

Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*).

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the Waterboard in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Comment #1 – CESA Listed Species Impacts

Comment: Components of the Project may result in take of CESA listed species. Impact pile driving and diver assisted hydraulic dredging utilize equipment and create impacts that have been associated with take of listed species, specifically longfin smelt and chinook salmon. Work proposed outside of the work window could also result in take of listed species. In Section 4.9, Table 4-5 Permits and Approvals, is consistent with the Departments recommended permitting approach to the proposed work. The Department is also in agreement with the proposed mitigation/minimization measures proposed in Section 6.1 (Mitigation Measures – Biological Resources).

Recommendations: The Department recommends PG&E consult on receiving an Incidental Take Permit for utilizing an impact pile driver, hydraulic suction dredge,

and conducting work outside of the approved work windows which can result in take of CESA listed species.

Comment #2 – Pacific herring

Comment: Pacific herring are present along the San Francisco waterfront during the winter months, December through March, as they transit the area to stage for spawning events. Spawning can also occur occasionally at or near the location of the Project. Conducting dredging and/or pile driving activities during the herring spawning season can have impacts to all life stages of the species.

Recommendations: The Department recommends that PG&E consult further with the Department regarding a herring work window waiver, as mentioned within Section 4.9, for any work proposed to take place between December 1 and March 15 each year of the Project. Specific avoidance and minimization measures would need to be determined yearly based on the exact type of work being proposed during each spawning season and could be further discussed within the framework of a 2081 Incidental Take Permit consultation.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). Information on submitting data to the CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by Department. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

The Department appreciates the opportunity to comment on the MND to assist the Waterboard in identifying and mitigating Project impacts on biological resources.

Ross Steenson
San Francisco Regional Water Quality Control Board
November 30, 2021
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Questions regarding this letter or further coordination should be directed to Arn Aarreberg, Environmental Scientist, at (707) 791-4195 or Arn.Aarreberg@wildlife.ca.gov.

Sincerely,



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